IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

SUIT No.2925 of 1989

Shri Madhusudan Shantilal Shah, adult, Indian Inhabitant, carrying on business in the name and style of M/s Ravi Industries at Anand Bhavan, 102, Keshavji Naik Road, Bombay-400009
..Plaintiff.

1(A). Divya Madhusudan Shantilal Shah of Bombay, Indian Inhabitant residing at 25, Chaturbhuj Bhavan, Mathurdas Road, Kandivali (West) Bombay-400 067.

1(B). Devang Madhusudan Shah of Bombay Indian Inhabitant residing at 25, Chatrabhuj Bhavan, Mathuradas Road, Kandivali (West) Bombay-400 067.

1(C). Samir Madhusudan Shah of Bombay Indian Inhabitant residing at 25, Chatrabhuj Bhavan, Mathuradas Road, Kandivali (West) Bombay-400 067.

1(D). Pallavi Yogesh Shah of Bombay Indian Inhabitant residing at 25, Chatrabhuj Bhavan, Mathuradas Road, Kandivali (West) Bombay-400 067.

(Plaintiff Nos. 1A to 1D respectively as the legal heirs of the deceased Madhusudan Shantilal Shah)

Versus.

M/s. Indian Electro Chemicals Ltd, a Limited Company incorporated under the Indian Companies Act and having its registered office at Odhav Road, Odhav, Ahmedabad and their Bombay Office at Yusuf Building, Mahatma Gandhi Road, Bombay - 400 001. .. Defendant.

Mr P. P. Prabhu, Advocate for the Plaintiff.

None for the Defendant.

CORAM: V.C. DAGA,J.
DATED: 28th November,2007.

ORAL JUDGMENT

1. The plaintiff-firm carries on business under the name and style "Shree Synthetic Fibres Processers", having its place of business at Anand Bhavan, 102 Keshavji Naik Road, Bombay - 400 009.

2. The nature of business,inter-alia, consists of supply of materials to various parties. The plaintiff has filed the suit against the defendant, a Limited Company, having its registered office at Odhav Road Odhav Ahmedabad and branch office at Yusuf Building, Mahatma Gandhi Road, Bombay on the following factual matrix.

THE FACTS:-

3. According to the plaintiff, the defendant had approached the plaintiff at it's Bombay office in or about November,1983 and requested that their 252 spindles Barliner up Twisting Machine, which were having Drum take Up systems, was to be converted to Bobbing System by adding necessary spare parts; Take Up Roll, Pulley, Brackets, Shafting Rubber Packing and Nut Bolts, etc. The said machine was at Ahmedabad factory of the defendant's

Company. The defendant's Company offered also to pay to the plaintiff his labour charges for the job work and other incidental expenses connected with the said job work and also for the price of the spare parts required for the conversion.

4. According to the plaintiff,after certain negotiations it was agreed abetween the parties that the defendant Company would pay to the plaintiff Rs. 1,000/- for each machine for such conversion terms and conditions,

5. The defendant agreed to the terms of the plaintiff-firm. The said terms, inter alia, included the obligations on the part of the defendant to pay at Bombay to the plaintiff his labour charges for the job work and other incidental expenses connected with the said job work and also for the price of the spare parts required on the agreed date. The defendant had agreed to pay interest at the rate of 24% per annum per month on the amount of bill remaining unpaid after expiry of the agreed date of payment.

6. According to the plaintiff, defendant-agreed to the usual terms of the

plaintiff-firm. Accordingly, business transactions started between them resulting in number of dealings between them which are reflected in the books of account. In the said account of the defendant, plaintiff firm has debited from time to time, in usual course of business, the amount payable by the defendant.

7. According to the plaintiff, after having made verification of the books of account, plaintiff firm has to recover Rs. 31,728/- outstanding against the defendant.

8. The plaintiff also states that the defendant has acknowledged its liability and promised to pay its liability in the sum of Rs. 31,728/-. On 23.8.1986, the Chief Accountant of the defendant's Company on its behalf issued a Memo acknowledging that a sum of Rs. 31,728/- was the balance outstanding and payable to the plaintiff in the books of account of the defendant's company.

9. The plaintiff has also filed photostat copies of the documents alongwith the plaint in support of the suit claim.

10. On being summoned, the defendant appeared through its Advocate but failed to file written statement. Consequently, the plaintiff was directed to file affidavit of evidence and original documents in support of the suit claim by order dated 13.8.2007. Accordingly, the plaintiff has filed affidavit of evidence, duly affirmed by the plaintiff No.1(A) and has produced documents in support of the suit claim. All these documents are proved through the said affidavit. Consequently, they are marked as Exhs.P-1 to P-4.

11. Plaintiff appeared before this Court and offered herself for cross-examination. Since nobody was appearing on behalf of the defendant, the affidavit remained unchallenged.

CONSIDERATION:
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12. Learned counsel for the plaintiff was heard. After having heard plaintiff, I am constrained to observe that averments made in the plaint for want of challenge and the documents having been proved by the plaintiff

through her evidence, suit of the plaintiff is liable to be decreed Hence, the following order:

ORDER

(i) The suit is decreed.

(ii) The defendant do Rs.31,728.00 with interest thereon from the date of the suit at the rate of 12% per annum till realization of decretal amount in full and final with costs.

(iii) Decree be drawn in terms of this order.

JUDGE.